

DE 01-247

UNITIL ENERGY SYSTEMS, INC.
AND
UNITIL POWER CORP.

Proposal to Restructure Unitil Companies

Order Approving Certain Requests by Unitil Companies
In Connection With Indicative Round Bidding for the
Sale of Power Supply Portfolio and
Acquisition of Transition and Default Service

O R D E R N O. 24,118

January 30, 2003

APPEARANCES: Scott J. Mueller, Esq. of LeBoeuf, Lamb Greene and MacRae, L.L.P. for Unitil Energy Systems, Inc. and Unitil Power Corp.; Michael W. Holmes, Esq. for the New Hampshire Office of Consumer Advocate; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On January 25, 2002, Concord Electric Company (CEC) and Exeter & Hampton Electric Company (E&H), the corporate predecessors of Unitil Energy Systems, Inc. (UES), and Unitil Power Corp. (UPC; collectively, UES and UPC are referred to as the Unitil Companies or Unitil) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of an offer of settlement for restructuring the Unitil Companies. The proceedings have been divided into three phases.

The Phase I proceedings focused on how the Unitil Companies will implement electric industry restructuring pursuant to RSA 374-F. Phase I culminated in an order, *Concord*

Electric Company and Exeter & Hampton Electric Company, Order No. 24,046 (August 28, 2002) (Phase I Order), which conditionally approved the Phase I Settlement Agreement for Restructuring the Unitil Companies.

Phase II dealt with the other issues in the docket except those reserved for decision in Phase III. Phase II issues included, among others, the merger of E&H and CEC into UES, the amendment of the so-called Unitil System Agreement, and the establishment of new distribution rates for UES. The Phase II proceedings resulted in an order, *Concord Electric Company and Exeter & Hampton Electric Company*, Order No. 24,072 (October 25, 2002) (Phase II Order), which approved the Phase II Settlement Agreement and an amendment to the Phase I Settlement Agreement, and denied a motion for rehearing of the Phase I Order.

The Phase II Order reserved for a later decision the matter of the imposition of a residential late payment fee contemplated in the Phase II Settlement Agreement. The Commission approved the implementation of a residential late payment fee in *Concord Electric Company and Exeter & Hampton Electric Company*, Order No. 24,088 (November 22, 2002).

The focus of the Phase III proceedings is on the auction of UPC's power supply portfolio and UES' solicitations

of transition and default supply service for its G-1 and non-G-1 customers, pursuant to the Phase I Settlement Agreement, as amended, and the Phase I Order.

The above cited orders and *Concord Electric Company and Exeter & Hampton Electric Company*, Order No. 23,935 (March 15, 2002) (Order Following Prehearing Conference) include a detailed procedural history of this docket through November 22, 2002. The following discussion completes the procedural history from November 22, 2002 through the date of this order.

On November 25, 2002, UES filed revised tariff pages with the Commission for effect on December 1, 2002.

By letter dated December 4, 2002, Commission Staff confirmed its review of the revised tariff pages and compliance with Puc 1603 tariff filing requirements.

On December 20, 2002, UES filed a decremental late payment fee cost analysis pursuant to Order No. 24,088.

By letter dated December 23, 2002, the Commission's Executive Director and Secretary notified Congressman-Elect Jeb Bradley that his name was being removed from all Commission docket service lists, including this docket.

On January 21, 2003, in accordance with the procedural schedule set forth in the Phase II Order, UES and UPC filed their report and recommendations on the initial round results of

UPC's portfolio auction and UES' solicitations for transition and default service supply (Report and Recommendations). Accompanying this filing was a Motion for Protective Order filed by UPC and UES requesting confidential treatment of the Report and Recommendations.

On January 23, 2003, UPC and UES filed with the Commission the summary portion of its Report and Recommendations which had been inadvertently omitted from their January 21, 2003 filing.

As scheduled in the Phase II Order, the Commission held a hearing on January 24, 2003 regarding the Report and Recommendations and the Motion for Protective Order. The hearing commenced in public session. Consistent with the Motion for Protective Order, at the Unitil Companies' request, and without objection from the parties present, the remainder of the hearing was held on a confidential basis. David T. Lifland, a principal of The NorthBridge Group, and David K. Foote and Karen M. Asbury testified on behalf of the Unitil Companies, subject to cross examination by the New Hampshire Office of Consumer Advocate (OCA) and Commission Staff.

II. THE MOTION FOR PROTECTIVE ORDER AND REQUESTED COMMISSION APPROVALS

A. Motion for Protective Order Filed on January 21, 2003

The Unitil Companies request protective, confidential treatment of the results of the auction and solicitation process under which UPC is divesting its portfolio of power supply contracts and UES is procuring power supplies for transition and default service. They state that on November 7, 2002 Unitil issued its Requests for Proposals (RFPs) approved by the Commission in Order No. 24,072 to sell its portfolio of power supply contracts and seek bids to provide wholesale supplies for transition and default service, and that indicative bids were received on January 17, 2003, with final, binding bids due on February 7, 2003.

Unitil seeks to protect from public disclosure the bids received in response to the RFPs and its analysis of those bids, on grounds that maintaining the confidentiality of the identity of the bidders and the details of their bids is critical to ensuring the integrity of the auction and solicitation processes. Furthermore, according to Unitil, disclosure of the information could compromise Unitil's negotiating position, or provide an unfair advantage to certain

bidders, to the ultimate detriment of Unitil's customers. Finally, Unitil states that it seeks this protection from disclosure on a continuing basis in order to protect bidders' confidential business information and to encourage bidders to participate in future solicitations. Specifically, Unitil seeks protective treatment for the summary and analysis of initial round results, as well as the results and analysis of the final bids to be filed with the Commission in February, 2003, subject to the on-going authority of the Commission to reconsider in the future whether circumstances continue to warrant such protective treatment consistent with RSA 91-A.

As in previous motions of this kind, Unitil affirms its intent to make such information available to Commission Staff, the OCA, the Governor's Office of Energy and Community Services and other parties which execute appropriate confidentiality certifications or agreements consistent with the requested protective order.

B. Commission Approvals Requested by Unitil Companies

The Unitil Companies seek six specific approvals from the Commission for the final round of bidding for the UPC portfolio auction and UES transition and default service supply solicitations:

1. Approval of the modification in transition and default service supplier responsibilities to exclude obligations for Regional Network Service (RNS) and network load and to shift recovery of RNS and network load costs from the fixed supply cost for transition and default service to the External Delivery Charge (EDC), subject to final approval of tariff changes and charges in March, 2003.
2. Approval of a downward adjustment of \$2.50 per megawatt hour (mWh) to each of the annual prices in both pricing streams for the supply solicitations, resulting in target pricing of \$44.50, \$47.50 and \$50.50 (non-G-1 only), for years 1, 2 and 3, respectively.
3. Approval of an adjustment of the monthly payment in the portfolio auction to \$880,000 per month and implied modifications to the stranded cost charges (SCC), subject to final approval in March, 2003.
4. Approval of May 1, 2003 as the start date for customer choice for all customers.
5. Approval of technical adjustments to the "Agreed-Upon Procedures and Criteria" (see pages 2-6 of the confidential summary of initial round results).
6. Approval of the option to postpone the final bid due date to February 14, 2003, with notice of such postponement to be provided by Unitil to the Commission by January 31, 2003.

The first requested approval involves a change to the transition and default service RFPs and a proposed change to certain terms and conditions of the UES tariff filed in the Phase II proceedings. The changes would mean, in effect, that costs incurred under the NEPOOL Open Access Transmission Tariff through the RNS and associated "network load" charges will be reflected in the EDC rather than in the amounts to be paid for

transition and default service for both G-1 and non-G-1 customer groups. By shifting the obligation and associated costs from the supplier to UES, the Unitil Companies expect these changes to produce a much better overall bid response and result in better bids and a better cost structure for retail customers. Regarding the third requested approval, the \$880,000 would be reflected in the SCC instead of the \$984,000 provided for in the initial round RFPs. The fourth requested approval reflects evaluation of the indicative round bids and would mean that there will be no delay in the date UES non-G-1 customers, or any other Unitil customer, may choose their electricity supplier. Thus, choice date for all customers is targeted for May 1, 2003. The sixth requested approval is an addition to the procedural schedule approved in the Phase II Order and does not change any dates or milestones included in the procedural schedule. Thus, the procedural schedule applicable to the remainder of this docket, including both the procedural schedule approved in the Phase II Order and the sixth requested approval, is:

Notice to NHPUC of postponement of final bid due date (Unitil option)	1/31/03
Final bids due	2/07/03 or 2/14/03
Executed contracts filed with NHPUC	2/26/03
Executed contracts filed with FERC	2/28/03
NHPUC hearings on executed contracts	3/06/03
Final NHPUC order on executed contracts requested	3/14/03
Contract implementation materials submitted to the ISO	4/15/03
Implementation of Choice, Divestiture, Revised Rates, and Amended System Agreement	5/01/03

III. COMMISSION ANALYSIS

The Motion for Protective Order filed on January 21, 2003 is similar to several motions previously granted in this docket. No parties objected to this Motion.

The New Hampshire Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. See RSA 91-A:4, I. The statute contains an exception for "confidential, commercial or financial information." RSA 91-A:5, IV. The case law interpreting whether information is considered confidential requires an objective test; it is not based on the subjective expectations of the party generating the information. See *Union Leader Corp.*

v. New Hampshire Housing Finance Authority, 142 NH 540 (1997).

In order to show that the information is sufficiently "confidential to justify nondisclosure the party resisting disclosure must prove that the disclosure is likely to (1) impair the state's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." *Id.*

We have reviewed the request for confidential treatment and protective order and find that the Unitil Companies have provided credible arguments as to the commercial sensitivity of the information for which protection is sought. As we found in an earlier proceeding considering the auction of the Seabrook Nuclear Generating Station (see Order No. 23, 986 in Docket No. DE 02-075) disclosure of auction results could result in competitive damage to bidders, and also impair the ability of the state to obtain such information in the future. Not only do we believe the information is commercially sensitive, we also believe that public disclosure of bids, bid analyses, financial assessments, and data related to the auction would chill future auction transactions, thereby limiting the results that might otherwise have been achieved.

In balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are persuaded that the interest of the Unitil Companies and Unitil ratepayers in non-disclosure outweighs the public's interest in obtaining access to the information. We will therefore grant the Motion at this time. Consistent with the Motion and our practice, the protective treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider the protective order in light of RSA 91-A, should circumstances so warrant.

We have reviewed the Report and Recommendations filed by the Unitil Companies and have considered the testimony and exhibits presented during direct and cross examination at the hearing on January 24, 2003. We are persuaded that the six specific requests for approval made by the Unitil Companies are reasonable. With these approvals, both the process of obtaining the indicative bids and the substance of those bids, comply with the agreed-upon selection procedures and criteria approved by Order Nos. 24,046 (August 28, 2002) and 24,088 (November 22, 2002). Accordingly, we approve the Unitil filing.

Based upon the foregoing, it is hereby

ORDERED, that the Unitil Companies' Motion for Protective Order filed on January 21, 2003 is GRANTED, subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider in light of RSA 91-A, should circumstances so warrant; and it is

FURTHER ORDERED, that the approvals requested by the Unitil Companies, namely, (i) approval of the modification in transition and default service supplier responsibilities to exclude the obligations for RNS and network load and to shift recovery of RNS and network load costs from the fixed supply cost for transition and default service to the External Delivery Charge, subject to final approval of tariff changes and charges in March, 2003; (ii) approval of a downward adjustment of \$2.50 per megawatt hour (MWh) to each of the annual prices in both pricing streams for the supply solicitations, resulting in target pricing of \$44.50, \$47.50 and \$50.50 (non-G-1 only), for years 1, 2 and 3, respectively; (iii) approval of an adjustment of the monthly payment in the portfolio auction to \$880,000 per month and implied modifications to the Stranded Cost Charges, subject to final approval in March, 2003; (iv) approval of May 1, 2003 as the start date for customer choice for all customers;

(v) approval of technical adjustments to the "Agreed-Upon Procedures and Criteria"; and (vi) approval of the option to postpone the final bid due date to February 14, 2003, with notice of such postponement to be provided by Unitil to the Commission by January 31, 2003, are GRANTED.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of January, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary